DB NEPA Comments from Contractor Table

Letter ID: 0396

Commenter Name: N/A

Commenter Org: Sicangu Lakota Treaty Council

Comment Text:

SICANGU LAKOTA TREATY COUNCIL

RESOLUTION NO. 2017-02

WHEREAS, the Rosebud Sioux Tribal Council has established a Sicangu Lakota Treaty Council to protect, analyze, educate, and study issues related to the Fort Laramie Treaty of 1851 and the Fort Laramie Treaty of 1868, and other related treaties; and

WHEREAS, the Sicangu Lakota Treaty Council to consider and protect the Sicangu Lakota Way of Life pertaining to cultural practices and sacred sites within the treaty boundaries makes the following recommendation, and

WHEREAS, the Rosebud Sioux Tribe or Sicangu Lakota Oyate is a successor Tribe to the bands of the Dakota/Nakota/Lakota Oceti Sakowin Tribes also known as the Great Sioux Nation that are signatory bands to the Fort Laramie Treaties of 1851 and 1868; and

WHEREAS, the Oceti Sako win tribes of the Lakota, Dakota, and Nakata consider the Black Hills of South Dakota embodies ancient sacred sites to include and not limited to Inya Kaga, Ki Iyanka Ocanku Sa (Red Race Track), Wasun Wiconiye (Wind Cave), Mato Tipila (Bear Butte), Hihan Kaga (Black Elk Peak), Buffalo Gap, Pesla, and

WHEREAS, the Sicangu Lakota Treaty Council determines that the Dewey Burdock Uranium Mine Injection Wells are within the sacred site Ki Iyanka Ocanku Sa or Red Race Track which is held as a spiritual and sacred site, and

WHEREAS, the Policy Statement in the EPA's policy is to consult on a government-to-government basis with federally recognized governments when EPA actions and decisions may affect tribal interests. Consultation is process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. As a process, consult includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by past and current practices, adjustments made through its Policy the continuing dialogue between EPA and tribal governments, and program and regional of consultation procedures and plans. and

WHEREAS, the United States Environmental Protection Agency Region 8 is requesting public comment by May 19, 20177, on two Underground Injection Control (UIC) Draft Area Permits and one associated proposed aquifer exemption decision for the Dewey-Burdock uranium in-situ recovery (ISR) site located near Edgemont, South Dakota, under the authority of the Safe Drinking Water Act and VIC program regulations. The Dewey-Burdock site is located in southwestern Custer County and northwestern Fall River County, on the Wyoming/South Dakota border, and

WHEREAS, the EPA Region 8 UIC Program is issuing two Draft UIC Area Permits to Powertech (USA) Inc. of Greenwood Village, Colorado, for injection activities related to uranium recovery. One is a UIC Class ill Area Permit for injection wells for the ISR of uranium; the second is a UIC Class V Area Permit for deep injection wells that will be used to dispose of ISR process waste fluids into the Minnelusa Formation after treatment to meet radioactive waste fluids into the Minnelusa Formation after treatment to meet radioactive waste and hazardous waste standards. The EPA is also proposing an aquifer exemption approval in connection with the Class III Area Permit to exempt the uranium-bearing portions of tine Inyan Kara Group aquifers, and

WHEREAS, the EPA is also seeking comment on two options for approval of the aquifer exemption that Powertech requested related to the Class ill permit application. The two options are discussed in the Auquifer Exemption Draft Record of Decision available on the EPA Region 8 UI Program Website, and

WHEREAS, the Sicangu Lakota Treaty Council has determined that both of the proposed injection wells are located within the 1851 and 1868 Fort Laramie Treaty Boundary lines, and therefore in violation of the Fort Laramie Treaty of 1851 and 1868,

WHEREAS, Article 6 if the US Constitution states that "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." And

WHEREAS, the American Indian Religious Freedom Act (AIRFA) (16 U.S.C. 1996) AIRFA establishes the policy of the federal government "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites and

WHEREAS, the Archeological Resources Protection Act of 1979. (ARPA) (16 U.S.C. 470aa-mm) ARPA requires federal agencies to consult with tribal authorities before permitting archeological excavations on tribal lands (16 U.S.C. 470cc(c)). It also mandates the confidentially of information concerning the nature and location of archeological resources, including tribal archeological resources, and

WHEREAS, the National Historic Preservation Act (NHPA) Regulations Implementing Section 106 (36 CFR Part 800) The regulations implementing Section 106 of the NHPA require consultation with Indian tribes throughout the historic preservation review process. Federal agencies are required to consult with Indian tribes on a government-to-government basis, in a manner that is respectful of tribal sovereignty. The regulations require federal agencies to acknowledge the special expertise of Indian tribes in determining which historic properties are ofreligious and cultural significance to them, and

WHEREAS, the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 , et. seq.) NAGPRA requires consultations with Indian tribes, traditional religious leaders and lineal descendants of Native Americans regarding the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects and other items. Under the Act, consultation is required under certain circumstances, including those identified in Sections 3002(c), 3002(d), 3003, 3004, and 3005, and

WHEREAS, the National Environmental Policy Act (NEPA) Implementing Regulations 40 CFR Part 1500 NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for any proposed major federal action that may significantly affect the quality of the human environment. While the statutory language of NEPA does not mention Indian tribes, the Council on Environmental Quality (CEQ) regulations and guidance do require agencies to contact Indian tribes and provide them with opportunities to participate at various stages in the preparation of an EA or EIS. CEQ has issued a Memorandum for Tribal Leaders encouraging tribes to participate as cooperating agencies with federal agencies in NEPA reviews. Section 40 CFR 1501.2(d)(2) requires that Federal agencies consult with Indian tribes early in the NEPA process, and

WHEREAS, the EPA states that "Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above underground sources of drinking water. This di sposal can pose a threat to ground water quality if not managed properly.", and near the Black Hills which the Oceti Sakowin Tribes considers sacred, and

WHEREAS, the Sicangu Lakota Treaty Council reminds the EPA that according to Lakota oral history there are underground water channels or chambers in the Black Hills region that reach the Oglala Aquifer and that said the injection wells toxic chemicals or substances could harm water sources, wells and supplies that are used by humans within tbe said Treaty Boundaries, and

WHEREAS, The Sicangu Lakota Treaty Council opposes any permits to be granted by the EPA for mining, injection wells, fracking, or any type of activities that will hann tbe Sacred Black Hills and the Oceti Sakowin Tribes within the Fort Laramie Treaty of 1851 and 1868, and

THEREFORE, BE IT RESOLVED, that the Sicangu Lakota Treaty Council hereby strongly urges and requests the EPA to deny both permits and any future permit applications relating to Uranium mining or the extraction of minerals or rare earth elements.

CERTIFICATION

This is to certify that the above Resolution No. 2017-02 was duly passed by the Sicangu Lakota Treaty Council on May 2, 2017, Motion to approve by Shane Red Hawk. Second by Delano Clairmont with a vote of Four (4) in favor, Zero (0) opposed, and One (1) not voting. The said resolution was adopted pursuant to authority vested in the Sicangu Lakota Treaty Council under the laws of the Rosebud Sioux Tribe. A quorum was present.

ATTEST:

Fremont Fallis - Chairman

Sam High Crane - Vice-Chairman

Letter ID: 07461 (5/9 Rapid City hearing)

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Individual

Comment Text:

And second, I have done a number of these kind of scoping meetings, and I'm kind of familiar with them. And, you know, when you leave, you're going to count the comments and the number that actually supported the treaty and the NEPA process and tribal historic rights.

And so before I continue on, I want you to take a note of a silent vote from the people here.

And so I'm asking the people here standing behind to show your hand if you support the 1868 Treaty of the Lakota people and raise your hand.

So I'd like you to take note that the majority of people here who might not mention that did, in fact, vote in favor of you recognizing the working power and authority of the 1868 Treaty.

[...]

Next, I would like you to take note that the United States or its signators to the 1974 Self-Determination Act of the indigenous people of this country known as United States, and by doing so, that gave us a constitutional right under the U.S. Constitution and the recognition of the sovereign authority of the indigenous peoples wherever they live. And so I would like you to take note of that.

And then also, I want to -- I think it's important that you understand also that there's also not only the previous violations that I spoke of, where you had the show of hands, silent vote in favor of those comments of mine, but you also need to recognize international law and the rights of indigenous people under the United Nations Declaration on the Rights of Indigenous Populations [sic], which the United States is a signator to.

So I want to read that to you as quickly as I can before I lose my time.

The United Nations Declaration on the Rights of Indigenous Populations [sic]. Article 27, Adjudication:

"States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open, and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs, and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories, and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process."

Article 25 of the U.N. Declaration on the Rights of Indigenous Peoples, a Distinctive Relationship: "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."

Article 26 of the same document --

[...]

KEITH JANIS: I will right now.

Use and Ownership: "Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired. Indigenous peoples have the right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."

And: "States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions, and land tenure systems of the indigenous people concerned."

Thank you. Mni Wiconi.

Letter ID: 00519

Ex. 6 Personal Privacy (PP)

Commenter Org: Black Hills Clean Water Alliance

Comment Text:

As part of the new process, the EPA should do thorough tribal consultation. The existing documents indicate that this process has barely begun, and yet draft permits have been issued. This makes a mockery of the consultation process, which should be completed well before draft permits are issued, so that the resulting information can be analyzed. The EPA must halt all further action until mutually-satisfactory consultation is completed. All cultural and historical properties must be given adequate protection.

[...]

The undersigned respectfully request that the EPA stop the permitting processes for the proposed Dewey-Burdock project. At the very least, tribal consultation and a de novo NEPA process are required. At best, the permits and the exemption should be denied.

Letter ID: 00528

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Aligning for Responsible Mining

Comment Text:

EPA must delay any permitting action until a fully competent cultural resources survey is conducted and the Tribe and the public has an opportunity to review and comment on the potential impacts to those important resources. Additionally, EPA should reject the PA as inadequate and engage in meaningful and good-faith consultation with the Oglala Sioux Tribe professional staff and Tribal Council in order to ensure that, in coordination with the Tribe, all cultural resources are identified, impacts are assessed and mitigation measures are developed and implemented.

[...]

4. COMMENTS ON THE IDENTIFICATION OF TRADITIONAL CULTURAL PROPERTIES AT THE DEWEY-BURDOCK PROJECT SITE AREA OF POTENTIAL EFFECTS

EPA states that:

Based on the information we have reviewed to date, and subject to resolving concerns identified in the NRC administrative review process, the EPA believes that the level of work completed under the auspices of the NRC on the Class III Cultural Resources Survey appears thorough and comprehensive for the APE defined by the NRC, provided the PA stipulations are followed concerning the unexpected discovery of additional historical properties.

EPA states that its consideration of the extent of cultural resource issues at the Dewey- Burdock site is based on "Section 3.9.3 of the NRC Supplemental Environmental Impact Statement prepared for the Dewey-Burdock Project (SEIS) and summarized in Appendix B of the NRC PA."

EPA's characterization of the current status of the NRC Staff's National Environmental Policy Act and National Historic Preservation Act compliance is not consistent with the Nuclear Regulatory Commission's recent ruling.[10]

In fact, the result of the Nuclear Regulatory Commission process was an express holding that the Class III archaeological study conducted at the site **failed** to satisfy any of the requirements associated with either the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA) with respect to cultural resources.

Specifically, the NRC affirmed the Atomic Safety Licensing Board's express ruling that:

The Board finds that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents do not satisfy the requirements of the NEPA, as they do not adequately address Sioux tribal cultural, historic and religious resources.

In the Matter of Powertech USA, Inc., LBP-15-16, 81 NRC 618, 708 (2015).

Thus, EPA's reliance on the NRC SEIS is entirely misplaced. There has never been a cultural resources survey conducted on the Dewey-Burdock site that took into account any Sioux cultural resources. **EPA simply cannot rely on the NRC SEIS analysis in any way for such a survey**.

Further, the NRC affirmed the Board's ruling that "Meaningful consultation as required by [the NHPA] has not occurred." Id. This ruling was made despite the existence of the Programmatic Agreement, ("PA") which EPA suggests it might sign on to in an effort to fulfill its NHPA obligations.

However, EPA appears to be unaware that the PA it references was roundly condemned by every single Sioux tribal government that reviewed it. **Not a single Tribe has agreed to be a signatory on the PA meaning the PA has been literally shoved down the Tribes' collective throats.** The critique of the terms of the PA from the Tribes was severe.[11] In these letters, the Oglala Sioux Tribe identifies specific terms in the PA that fail to provide any detail or specificity as to future analyses of the project area, methodologies proposed for these analyses, or what mitigation measures may be adopted in the future to address the impacts.[12]

The Standing Rock Sioux Tribe raised similar concerns, but goes into highly specific detail, offering not only a letter describing their frustration in dealing with the NRC Staff on this issue, but also providing multiple substantive line by line comments, questions, and critiques to the PA.13 Unfortunately, NRC Staff did not provide any specific substantive response to either set of tribal concerns, nor did NRC Staff incorporate the changes proposed by either tribe. Instead, NRC Staff and Powertech pushed to finalize the PA without addressing the tribes' concerns.

These failure to comply with NEPA and NHPA are being highly scrutinized by federal courts. See *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, (D.C. Cir., slip. op. June 14, 2017).14 In that case, the Court ruled that the agency failed to include a large enough area in its analysis (similar to the comments herein that Buffalo Gap, SD, should be included in the EJ Analysis) and also that an EIS should have been done. These same failures are present in this EPA UIC permit decision.

This type of lack of meaningful consultation, in part, is what led to a NRC ruling finding a failure to comply with the NHPA consultation duties. EPA should not compound and exacerbate this failure by endorsing such a deeply flawed PA. Instead, EPA should seek to conduct a consultation effort that complies with the NHPA and meaningfully involves the Tribes in a discussion of the potentially affected cultural resources, the potential impacts to those resources, and possibly mitigation measures that can be implemented to protect those resources.

In any case, the existing PA is currently the subject of further discussion and negotiation as part of the NRC's finding that the NRC Staff has failed to comply with either NEPA or the NHPA with respect to identifying and evaluating impacts to Sioux cultural resources at the site. *See* May 31, 2017 letter from Oglala Sioux Tribe Historic Preservation Office; May 19, 2016 and January 31, 2017 Oglala Sioux Tribe/NRC Staff meeting summaries (all specifically identifying changes to the PA as necessary topics of ongoing NHPA consultation).

As such, EPA should increase its involvement and either work to develop an agreement with the affected Tribes, including the Oglala Sioux Tribe that properly takes into consideration the Tribes' perspectives. In the alternative, EPA should engage in the ongoing discussions between NRC and the Tribes, including the Oglala Sioux Tribe, and work toward a PA that satisfies all parties. The Oglala Sioux Tribe has a formal ordinance in effect regarding consultation, which requires the involvement of the Oglala Sioux Tribal Council.[15]

Notably, the record developed during the NRC hearing process demonstrates that the proposed Dewey-Burdock site contains significant cultural resources that could be impacted by the project. This fact is made clear even though no meaningful cultural resources survey has been conducted on the property.

Even the Augustana Class III archaeological survey upon which EPA attempts to rely recognizes that "the sheer volume of sites documented in the area is noteworthy."[16] Despite this acknowledgement, no competent Sioux cultural resources survey has ever been conducted on the site.

The NRC hearing record demonstrates that EPA simply cannot rely on the Powertech produced Class III archaeological survey for purposes of identifying impacts to cultural resource so as to satisfy its environmental impact review or NHPA obligations. Powertech candidly admits "that identifying religious or culturally significant properties in a project area is entirely reliant of the Tribes themselves and the special expertise of the Tribal cultural practitioners…."

Simply put, entities such as NRC or Powertech are not equipped with the Tribe-specific knowledge and traditions to adequately instruct a specific Tribe using 'proper scientific expertise' on this subject."17 The record and testimony contains no evidence that NRC Staff successfully equipped itself or acquired the necessary resources to meet NRC's NEPA duties involving religious and cultural resources.

The primary reliance by EPA on the Augustana study is not supportable – particularly given the testimony at the NRC hearing. Dr. Hannus, who lead the Augustana study at the behest of the applicant admitted that his team is not "in any way qualified to be conducting TCP surveys" and further conceded that given the heightened cultural issues of the Sioux Tribes that "there will be sites that will need to be addressed archaeologically"; Dr. Hannus: "And again, that really should clearly, I think, show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our purview to do that.").[18]

Applicant witness Dr. Luhman reiterated this point, confirming that "a traditional Level 3 survey may, in fact, encounter some resources that would be associated with Native American groups or which they would identify. But, they wouldn't necessarily identify all of the resources primarily because some of the knowledge is not available to those conducting the Level 3 survey. That would be provided by the Native American groups themselves."[19]

OST witness Mr. Mesteth: "[w]e're the ones that are the experts, not the archaeologists. They make assumptions and hypotheses about our cultural ways and it's not accurate. Some of the information is not accurate. And that's why we object in certain situations."[20]

Dr. Hannus testified that his office has never worked on any projects that considered the cultural resources at a site.[21] Despite this fact, NRC Staff witness Dr. Luhman testified that NRC Staff relied on Augustana to conduct all of the initial and follow up field survey work at the site, with the exception of the three non-Sioux tribes that submitted reports.[22]

Upon the Sioux Tribes' request as early as 2011 that cultural resource surveys be conducted at the site, NRC Staff prompted the applicant to bring in Dr. Sabastian and her firm to coordinate this review.[23] However, Dr. Sabastian also testified that she also has never been involved in any kind of "actual physical on-the-ground TCP survey-kind of thing that we're talking about."[24]

Lastly, Mr. Fosha testified that he worked with the applicant and Augustana "from the very start of the project, so the bulk of this material is a result of myself reviewing what Augustana College had been doing in the field."[25] Mr. Fosha testified that he met with the applicant and between them discussed methods for identification of sites and the methods and steps to take "throughout the process," but only related to the State of South Dakota permit, and having "nothing to do with the NRC permit or anything like that" – even remarking that "up until the point where Augustana was nearly finished I was the only review agency on this project."[26]

Despite Mr. Fosha being the only person giving any direction to Dr. Hannus' Augustana team, Mr. Fosha testified that his experience and focus was solely "the field of archaeology" and not culturally as to the concerns of the Tribes.[27]

The only NRC Staff or applicant witness that testified to having any experience in conducting cultural resource field surveys was NRC Staff witness Dr. Luhman. However, as stated, Dr. Luhman admitted to relying exclusively on Augustana for both the initial field work and the follow up field studies, even though Dr. Hannus' testimony had confirmed that Augustana had no culturally relevant experience.[28]

Dr. Luhman did testify that "in those projects in which I have been involved [a cultural survey] it is typically that [the Tribes] are working alongside with the archaeological survey team as they are going about doing the survey. It could be in the preliminary stages of doing the generalized recognizance (sic) of the project area. Oftentimes the federal agency and other parties will be along that process so that there can be discussions while out in the field, and these are for sometimes very large projects. But in my experience it typically is at the same time when there is an ongoing consultative and survey process."[29]

NRC Staff witness Ms. Yilma admitted that no written cultural resources analysis prepared during any part of the NEPA analysis included any comments or reports from any Sioux Tribes.[30] This is despite testimony from NRC Staff witness Ms. Yilma as to the NRC Staff's recognition of the importance of the area to the Sioux from a cultural perspective from the earliest stages of the application review stage.[31] NRC Staff witness Ms. Yilma also testified as to the importance and focus at least as early as 2011 by both the Sioux Tribes and within NRC Staff on the need for culturally-based field surveys in order to fulfill the NEPA and NHPA requirements.[32]

NRC Staff witness Ms. Yilma testified that after meeting in 2011 with the Oglala Sioux, Standing Rock Sioux, Flandreau Santee Sioux, Sisseton Wahpeton (Sioux), Cheyenne River Sioux, and Rosebud Sioux , NRC Staff specifically de 33 liberated about conducting an ethnographic study of the site to ensure incorporation of Sioux cultural and historic perspectives, but "the ultimate decision was instead of an ethnographic study a field survey was necessary, so we focused our attention on the field survey approach."[34]

Despite admitting that it was "necessary" to the analysis, no cultural resources review or field study incorporating any Sioux cultural expertise was ever conducted at the site or incorporated into any NEPA document.[35]

This testimony and evidence establishes NRC Staff's failure to conduct the necessary hard look under NEPA, as by their own admission, despite it being necessary to the analysis, no Sioux comments or reports were incorporated into the cultural resources reviews, and none of the parties that conducted any cultural review of the site, including field surveys, were trained, experienced, or competent to review or survey the area for, let alone determine impacts from the project to, the cultural resources of Sioux origin. Admissions and testimony confirm

that NRC Staff deferred to the applicant's unqualified consultants, while rejecting proposals to incorporate Sioux cultural expertise.

As a result of Powertech's and NRC Staff's inability to fulfill their obligations to properly ensure a competent cultural resources survey of the Dewey-Burdock site, EPA cannot rely on the NRC's NEPA documents to assess the cultural resources impacts of the proposed mine.

Similarly, because NRC Staff has failed to fulfill its government-to-government consultation duties under the NHPA, EPA also cannot rely on the PA or any other NRC Staff consultation to fulfill its own obligations under the NHPA.

[...]

6. Comments on measures to avoid, minimize or mitigate potential adverse effects on historic and traditional cultural properties pursuant to Section 106 of the National Historic Preservation Act and 36 CFR § 800.2(d) and § 800.6(a)(4)

The Environmental Protection Agency National Historic Preservation Act Compliance and Review for the Proposed Dewey-Burdock In-Situ Uranium Recovery Project, which is part of the Administrative Record for the UIC Class III Draft Area Permit, discusses how the EPA intends to comply with Section 106 of the National Historic Preservation Act.

To date, the EPA has done nothing meaningful to avoid, minimize or mitigate potential adverse effects on historic and TCPs under Section 106 other than rely on the promises of an insolvent and corrupt organization. Therefore, there has been a complete failure to provide measures required by Section 106 of NHPA and 36 CFR § 800.2(d) and § 800.6(a)(4).

Letter ID: 00546

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Oglala Sioux Tribe

Comment Text:

EPA FAILED TO COMPLY WITH THE CONSULTATION REQUIREMENTS OF NHPA SECTION 106

Under Section 106 of the National Historic Preservation Act, "The head of any Federal agency ... prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property." (54 U.S.C. §306108). In the administrative record, EPA has acknowledged that the need to comply with this requirement. However, EPA's *National Historic Preservation Act Draft Compliance and Review Document* fails to demonstrate compliance with NHPA Section 106.

The draft document purports to demonstrate consultation with the OST THPO by reference to a separate document of the Nuclear Regulatory Commission, captioned *Summary of Meeting with OST Regarding the Dewey-Burdock In Situ Uranium Recovery Project. May 19, 2016.* This meeting does not constitute Section 106 compliance by EPA.

The *Summary of Meeting* document states:

The purpose of the meeting was twofold: (i) to introduce the NRC's new management team responsible for the consultation process with the Oglala Sioux Tribe and the Tribe's new Tribal Historic Preservation Office staff, and (ii) to start the dialogue, on a Government-to-Government basis, regarding a path forward for consultation with the Oglala Sioux Tribe to address the Atomic Safety and Licensing Board's findings ...

([HYPERLINK "http://www.nrc.gov/docs/ml%201618mll%206182a069.pdf"]).

The meeting was about a related action by a separate agency, and not specifically about the identification, evaluation and determination of impacts from the proposed UIC injection wells to be permitted by EPA. It does not

constitute compliance by EPA with NHP A Section 106. There were no members of the Oglala Sioux Tribal Council at the meeting. It was not government-to-government consultation in compliance with E.O. 13175. The meeting combined and confused the two separate consultation requirements, and complied with neither requirement.

The Table beginning on page 7 of the *National Historic Preservation Act Draft Compliance and Review Document* likewise combines the issues of section 106 consultations and government-to-government meetings. On page 9, the Table lists "April 28, 2016 Consultation meeting with the Oglala Sioux Tribe," described as "In-person meeting at the Oglala Sioux Justice Center." The EPA totally confused the govemmentto-government consultation requirement under E.O. 13175 with the NHPA Section 106 consultation requirement -and complied with neither requirement.

The lack of NHP A Section 106 consultation is evidenced by the failure to address the OST THPOs concerns with the Programmatic Agreement, as discussed in the May 19, 2016 meeting between the Tribe and NRC. The lack of government-to-government consultation is evidenced by EPA's failure to comply with OST Ordinance No. 11-10 (*Ordinance Establishing Procedures for Government-to-Government Consultation Between the Oglala Sioux Tribe and the United States).* Ultimately, EPA failed to comply with the consultation requirements of federal law, and the Dewey-Burdock UIC permit applications must be denied accordingly.

I further express my support for the related concerns of the consolidated intervenors in this docket, as well as the testimonies of the Tribal Historic Preservation Officers of the *Oceti Sakowin Oyate.*

The concerns of the Oglala Sioux Tribe must be fully considered and acted upon by EPA. Approval of the Dewey-Burdock injection well application would violate the 1851 and 1868 Fort Laramie Treaties. Consequently, it violates federal and international law. It poses extreme risk to the waters of the Oglala Sioux Tribe, reserved under the Winters Doctrine. The EPA has given no consideration to these valuable property rights of our Tribe. Important consultation requirements under NHPA Section 106 and E.O. 13175 have been avoided and confused. EPA has failed to comply with these important consultation requirements. Further, the EPA has failed to consider the cumulative impacts of its actions on water quality and impact on the Pine Ridge Indian Reservation. For these reasons and as further described in the attached addendum, the Dewey-Burdock Class V UIC permit application must be denied.

Additional comments of the Oglala Sioux Tribe providing more detail are attached in the addendum hereto and incorporated herein.

[...]

ADDENDUM TO OGLALA SIOUX TRIBE COMMENTS

The federal courts have addressed the strict mandates of the National Historic Preservation Act:

Under the NHPA, a federal agency must make a reasonable and good faith effort to identify historic properties, 36 C.F.R. § 800.4(b); determine whether identified properties are eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4; assess the effects of the undertaking on any eligible historic properties found, 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a); determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); and avoid or mitigate any adverse effects, 36 C.F.R. §§ 800.8[c], 800.9(c). The [federal agency] must confer with the State Historic Preservation Officer ("SHPO") and seek the approval of the Advisory Council on Historic Preservation ("Council").

Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 805 (9th Cir. 1999). See also 36 C.F.R. § 800.8(c)(1)(v)(agency must "[d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA.").

The Advisory Council on Historic Preservation ("ACHP"), the independent federal agency created by Congress to implement and enforce the NHPA, determines the methods for compliance with the NHPA's requirements. See *National Center for Preservation Law v. Landrieu*, 496 F. Supp. 716, 742 (D.S.C.), *aff'd per curiam,* 635 F.2d 324 (4th Cir. 1980). The ACHP's regulations "govern the implementation of Section 106," not only for the Council itself, but

for all other federal agencies. *Id.* See also *National Trust for Historic Preservation v. U.S. Army Corps of Eng'rs*, 552 F. Supp. 784, 790-91 (S.D. Ohio 1982).

NHPA § 106 ("Section 106") requires federal agencies, prior to approving any "undertaking," such as the UIC permits for the proposed Dewey-Burdock Project, to "take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. § 470(f). Section 106 applies to properties already listed in the National Register, as well as those properties that may be eligible for listing. See *Pueblo of Sandia v. United States*, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 provides a mechanism by which governmental agencies may play an important role in "preserving, restoring, and maintaining the historic and cultural foundations of the nation." 16 U.S.C. § 470.

If an undertaking is the type that "may affect" an eligible site, the agency must make a reasonable and good faith effort to seek information from consulting parties, other members of the public, and Native American tribes to identify historic properties in the area of potential effect. 36 C.F.R. § 800.4(d)(2). See also *Pueblo of Sandia*, 50 F.3d at 859-863 (agency failed to make reasonable and good faith effort to identify historic properties).

The NHPA also requires that federal agencies consult with any "Indian tribe ... that attaches religious and cultural significance" to the sites. 16 U.S.C. § 470(a)(d)(6)(B). Consultation must provide the tribe "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(2)(ii).

Apart from requiring that an affected tribe be involved in the identification and evaluation of historic properties, the NHPA requires that "[t]he agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." 36 C.F.R. § 800.1(c) (emphasis added). The ACHP has published guidance specifically on this point, reiterating in multiple places that consultation must begin at the earliest possible time in an agency's consideration of an undertaking, even framing such early engagement with the Tribe as an issue of respect for tribal sovereignty. ACHP, Consultation with Indian Tribes in the Section 106 Review Process: A Handbook (November 2008), at 3, 7, 12, and 29.

Regarding respect for tribal sovereignty, the NHPA requires that consultation with Indian tribes "recognize the government-to-government relationship between the Federal Government and Indian tribes." 36 C.F.R. § 800.2(c)(2)(ii)(C). See also Presidential Executive Memorandum entitled "Government-to-Government Relations with Native American Tribal Governments" (April 29, 1994), 59 Fed. Reg. 22951, and Presidential Executive Order 13007, "Indian Sacred Sites" (May 24, 1996), 61 Fed. Reg. 26771. The federal courts echo this principle in mandating all federal agencies to fully implement the federal government's trust responsibility. See *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981) ("any Federal Government action is subject to the United States' fiduciary responsibilities toward the Indian tribes").

Whenever there is ambiguity interpreting or applying NHPA, or other laws, the federal agency staff is not entitled to "deference to an agency interpretation of an ambiguous statutory provision involving Indian affairs. In the usual circumstance, '[t]he governing canon of construction requires that 'statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.' This departure from the [normal deference to agencies] arises from the fact that the rule of liberally construing statutes to the benefit of the Indians arises not from the ordinary exegesis, but 'from principles of equitable obligations and normative rules of behavior,' applicable to the trust relationship between the United States and the Native American people." *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008) *quoting Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991); *Cobell v. Norton*, 240 F.3d 1081, 1101 (D.C. Cir. 2001) (*quoting Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, (1985)).

EPA states that:

Based on the information we have reviewed to date, and subject to resolving concerns identified in the NRC administrative review process, the EPA believes that the level of work completed under the auspices of the NRC on

the Class III Cultural Resources Survey appears thorough and comprehensive for the APE defined by the NRC, provided the PA stipulations are followed concerning the unexpected discovery of additional historical properties.

EPA states that its consideration of the extent of cultural resource issues at the Dewey-Burdock site is based on "Section 3.9.3 of the NRC Supplemental Environmental Impact Statement prepared for the Dewey-Burdock Project (SEIS) and summarized in Appendix B of the NRC PA."

EPA's characterization of the current status of the NRC Staff's National Environmental Policy Act and National Historic Preservation Act compliance is not consistent with the Nuclear Regulatory Commission's recent ruling. See CLI-16-20 (https://www.nrc.gov/docs/ML1635/ML16358A434.pdf). In fact, the result of the Nuclear Regulatory Commission process was an express holding that the Class III archaeological study conducted at the site failed to satisfy any of the requirements associated with either the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA) with respect to cultural resources.

Specifically, the NRC affirmed the Atomic Safety Licensing Board's express ruling that:

The Board finds that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents do not satisfy the requirements of the NEPA, as they do not adequately address Sioux tribal cultural, historic and religious resources.

In the Matter of Powertech USA, Inc., LBP-15-16, 81 NRC 618, 708 (2015). Thus, EPA's reliance on the NRC SEIS is entirely misplaced. Indeed, there has never been a cultural resources survey conducted on the Dewey-Burdock site that took into account any Sioux cultural resources. Moreover, NRC has divided its project approval into segments rendering the scope of NRC's consultation inapplicable to EPA's UIC analysis and approvals. As such, EPA simply cannot rely on the NRC SEIS analysis in any way for such a survey.

Further, the NRC affirmed the Board's ruling that "Meaningful consultation as required by [the NHPA] has not occurred." Id. This ruling was made despite the existence of the Programmatic Agreement, which EPA suggests it might sign on to in an effort to fulfill its NHPA obligations. However, EPA appears to be unaware that the PA it references was roundly condemned by every single Sioux tribal government that reviewed it. Indeed, not a single Tribe has agreed to be a signatory on the PA. The critique of the terms of the PA from the Tribes was severe. See attached February 5, 2014 Letter from Oglala Sioux Tribe President Bryan Brewer to NRC Staff; February 20, 2014 email from Standing Rock Sioux Tribe Historic Preservation Officer to NRC Staff (marked Exhibit NRC-016). In these letters, the Oglala Sioux Tribe identifies specific terms in the Agreement that fail to provide any detail or specificity as to future analyses of the project area, methodologies proposed for these analyses, or what mitigation measures may be adopted in the future to address the impacts. Id. at 2. The Standing Rock Sioux Tribe raises similar concerns, but goes into highly specific detail, offering not only a letter describing their frustration in dealing with the NRC Staff on this issue, but also providing multiple substantive line by line comments, questions, and critiques to the Agreement. Id. at 7-20. Unfortunately, NRC Staff did not provide any specific substantive response to either set of tribal concerns, nor did NRC Staff incorporate the changes proposed by either tribe. Instead, NRC Staff and Powertech pushed to finalize the PA without addressing the tribes' concerns.

This type of lack of meaningful consultation, in part, is what led to a NRC ruling finding a failure to comply with the NHPA consultation duties. EPA should not compound and exacerbate this failure by endorsing such a deeply flawed PA. Instead, EPA should seek to conduct a consultation effort that complies with the NHPA and meaningfully involves the Tribes in a discussion of the potentially affected cultural resources, the potential impacts to those resources, and possibly mitigation measures that can be implemented to protect those resources.

In any case, the existing PA is currently the subject of further discussion and negotiation as part of the NRC's finding that the NRC Staff has failed to comply with either NEPA or the NHPA with respect to identifying and evaluating impacts to Sioux cultural resources at the site. *See* attached May 31, 2017 letter from Oglala Sioux Tribe Historic Preservation Office; May 19, 2016 and January 31, 2017 Oglala Sioux Tribe/NRC Staff meeting summaries (all specifically identifying changes to the PA as necessary topics of ongoing NHPA consultation). As such, EPA should increase its involvement and either work to develop an agreement with the affected Tribes, including the Oglala Sioux Tribe, that properly takes into consideration the Tribes' perspectives. In the alternative, EPA should

engage in the ongoing discussions between NRC and the Tribes, including the Oglala Sioux Tribe, and work toward a PA that satisfies all parties. The Oglala Sioux Tribe has a formal ordinance in effect regarding consultation, which requires the involvement of the Oglala Sioux Tribal Council. See Ordinance No. 11-10 of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe. Notably, the record developed during the NRC hearing process demonstrates that the proposed Dewey-Burdock site contains significant cultural resources that could be impacted by the project. This fact is made clear even though no meaningful cultural resources survey has been conducted on the property. Even the Augustana Class III archaeological survey upon which EPA attempts to rely recognizes that "the sheer volume of sites documented in the area is noteworthy." Report at page 7.8. Despite this acknowledgement, no competent Sioux cultural resources survey has ever been conducted on the site.

The NRC hearing record demonstrates that EPA simply cannot rely on the Powertech-produced Class III archaeological survey for purposes of identifying impacts to cultural resource so as to satisfy its environmental impact review or NHPA obligations. Powertech candidly admits "that identifying religious or culturally significant properties in a project area is entirely reliant of the Tribes themselves and the special expertise of the Tribal cultural practitioners.... Simply put, entities such as NRC or Powertech are not equipped with the Tribe-specific knowledge and traditions to adequately instruct a specific Tribe using 'proper scientific expertise' on this subject." See attached Powertech Opening Statement at 34. The record and testimony contains no evidence that NRC Staff successfully equipped itself or acquired the necessary resources to meet NRC's NEPA duties involving religious and cultural resources. The primary reliance by EPA on the Augustana study is not supportable – particularly given the testimony at the NRC hearing. Dr. Hannus, who lead the Augustana study at the behest of the applicant admitted that his team is not "in any way qualified to be conducting TCP surveys" and further conceded that given the heightened cultural issues of the Sioux Tribes that "there will be sites that will need to be addressed archaeologically and there will be probably sites that need to be addressed as traditional cultural properties." See attached August 19, 2014 Transcript at p. 858, lines 4-8; 12-20. See also August 19, 2014 Transcript at p. 859, lines 18-24 (Dr. Hannus) ("And again, that really should clearly, I think, show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our purview to do that.").

Applicant witness Dr. Luhman reiterated this point, confirming that "a traditional Level 3 survey may, in fact, encounter some resources that would be associated with Native American groups or which they would identify. But, they wouldn't necessarily identify all of the resources primarily because some of the knowledge is not available to those conducting the Level 3 survey. That would be provided by the Native American groups themselves." August 19, 2014 Transcript at p. 762, line 24 to p.763, line 6. See also, August 19, 2014 Transcript at p. 764, lines 14-18 (OST witness Mr. Mesteth) ("[w]e're the ones that are the experts, not the archaeologists. They make assumptions and hypotheses about our cultural ways and it's not accurate. Some of the information is not accurate. And that's why we object in certain situations."); p. 765, line 25 to p. 766, line 9 (Mr. Mesteth).

Indeed, Dr. Hannus testified that his office has never worked on any projects that considered the cultural resources at a site. August 19, 2014 Transcript at p. 843, lines 4-7. Despite this fact, NRC Staff witness Dr. Luhman testified that NRC Staff relied on Augustana to conduct all of the initial and follow up field survey work at the site, with the exception of the three non-Sioux tribes that submitted reports. August 19, 2014 Transcript at p. 818, lines19-22.

Upon the Sioux Tribes' request as early as 2011 that cultural resource surveys be conducted at the site, NRC Staff prompted the applicant to bring in Dr. Sabastian and her firm to coordinate this review. August 19, 2014 Transcript at p. 784, lines 20-25 (Dr. Sabastian). However, Dr. Sabastian also testified that she also has never been involved in any kind of "actual physical on-the-ground TCP survey-kind of thing that we're talking about." August 19, 2014 Transcript at p. 846, lines 9-21.

Lastly, Mr. Fosha testified that he worked with the applicant and Augustana "from the very start of the project, so the bulk of this material is a result of myself reviewing what Augustana College had been doing in the field." August 19, 2014 Transcript at p. 865, lines 3-6. Mr. Fosha testified that he met with the applicant and between them discussed methods for identification of sites and the methods and steps to take "throughout the process,"

but only related to the State of South Dakota permit, and having "nothing to do with the NRC permit or anything like that" – even remarking that "up until the point where Augustana was nearly finished I was the only review agency on this project." August 19, 2014 Transcript at p. 865, line 23 to p. 866, line 5. Despite Mr. Fosha being the only person giving any direction to Dr. Hannus' Augustana team, Mr. Fosha testified that his experience and focus was solely "the field of archaeology" and not culturally as to the concerns of the Tribes. August 19, 2014 Transcript at p. 867, lines 14-20.

The only NRC Staff or applicant witness that testified to having any experience in conducting cultural resource field surveys was NRC Staff witness Dr. Luhman. However, as stated, Dr. Luhman admitted to relying exclusively on Augustana for both the initial field work and the follow up field studies, even though Dr. Hannus' testimony had confirmed that Augustana had no culturally relevant experience. August 19, 2014 Transcript at p. 818, lines19-22 (Dr. Luhman). Dr. Luhman did testify that "in those projects in which I have been involved [a cultural survey] it is typically that [the Tribes] are working alongside with the archaeological survey team as they are going about doing the survey. It could be in the preliminary stages of doing the generalized recognizance (sic) of the project area. Oftentimes the federal agency and other parties will be along that process so that there can be discussions while out in the field, and these are for sometimes very large projects. But in my experience it typically is at the same time when there is an ongoing consultative and survey process." August 19, 2014 Transcript at p. 836, line 18 to p. 837, line 2.

Consistent with the admitted lack of any culturally relevant experience or focus by any of the prior analysts in reviewing sites for cultural resource impacts, at the live hearing NRC Staff witness Ms. Yilma admitted that no written cultural resources analysis prepared during any part of the NEPA analysis included any comments or reports from any Sioux Tribes. August 19, 2014 Transcript at p. 821, lines 3-7; *id*. at p. 875, lines 6-11. This is despite testimony from NRC Staff witness Ms. Yilma as to the Staff's recognition of the importance of the area to the Sioux from a cultural perspective from the earliest stages of the application review stage. August 19, 2014 Transcript at p. 774, line 21 to p. 775, line 1. See also, August 19, 2014 Transcript at p. 771, lines 1-7 (Ms. Yilma). NRC Staff witness Ms. Yilma also testified as to the importance and focus at least as early as 2011 by both the Sioux Tribes and within NRC Staff on the need for culturally-based field surveys in order to fulfill the NEPA and NHPA requirements. August 19, 2014 Transcript at p. 776, line 22 to p. 777, line 3; p. 790, lines 1-17. Indeed, NRC Staff witness Ms. Yilma testified

that after meeting in 2011 with the Oglala Sioux, Standing Rock Sioux, Flandreau Santee Sioux, Sisseton Wahpeton (Sioux), Cheyenne River Sioux, and Rosebud Sioux (see August 19, 2014 Transcript at p. 810, lines 16-22), NRC Staff specifically deliberated about conducting an ethnographic study of the site to ensure incorporation of Sioux cultural and historic perspectives, but "the ultimate decision was instead of an ethnographic study a field survey was necessary, so we focused our attention on the field survey approach." August 19, 2014 Transcript at p. 846 line 22 to 847, lines 8. Despite admitting that it was "necessary" to the analysis, no cultural resources review or field study incorporating any Sioux cultural expertise was ever conducted at the site or incorporated into any NEPA document. August 19, 2014 Transcript at p. 821, lines 3-7 (Ms. Yilma); id. at p. 875, lines 6-11 (Ms. Yilma).

Taken together, this testimony and evidence establishes NRC Staff's failure to conduct the necessary hard look under NEPA, as by their own admission, despite it being necessary to the analysis, no Sioux comments or reports were incorporated into the cultural resources reviews, and none of the parties that conducted any cultural review of the site, including field surveys, were trained, experienced, or competent to review or survey the area for, let alone determine impacts from the project to, the cultural resources of Sioux origin. In answering a follow-up question by Chairman Froehlich to Dr. Hannus asking whether, as Dr. Sabastian had testified, did Dr. Hannus believe that identification of Sioux traditional sites "depends on the knowledge and traditional culture practitioners," Dr. Hannus responded: "Yes, I mean, I absolutely would have to, because there isn't any other way the framework that I work within functions." August 19, 2014 Transcript at p. 860, lines 1-8. In short, admissions and testimony confirm that NRC Staff deferred to the applicant's unqualified consultants, while rejecting proposals to incorporate Sioux cultural expertise.

As a result of Powertech's and NRC Staff's coordinated inability to fulfill their obligations to properly ensure a competent cultural resources survey of the Dewey-Burdock site before approvals are given and the aquifers are impacted, EPA cannot rely on the NRC's NEPA documents to assess the cultural resources impacts of the proposed mine. Instead, the scope of EPA's consultation must match the scope of the UIC duties, which apply to the full life of the proposed mine, not the initial set of NRC-approved segments. Similarly, because NRC Staff has failed to fulfill its government-to-government consultation duties under the NHPA, EPA also cannot rely on the PA or any other NRC Staff consultation to fulfill its own obligations under the NHPA. Rather, EPA must delay any permitting action until a fully competent cultural resources survey is conducted and the Tribe and the public has an opportunity to review and comment on the potential impacts to those important resources. Additionally, EPA should reject the PA as inadequate and engage in meaningful and good-faith consultation with the Oglala Sioux Tribe professional staff and Tribal Council in order to ensure that, in coordination with the Tribe, all cultural resources are identified, impacts are assessed and mitigation measures are developed and implemented.

Letter ID: 07461 (5/9 Rapid City hearing)

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Individual

Comment Text:

Today, like we said, you know, the chairman before me, he said the NEPA, NHPA, all the federal laws that your government is supposed to protect for the people is not happening. So today, for the record, and your record, I'm going to say that there was never no true meaningful consultation on these issues.

And stand up for and with the people and everybody that's here. I oppose it. And I'm sure that everybody that got up here is opposing it. And I hope you're counting each person that comes up here and makes a statement, that they are in opposition to this.

I, too, feel like everything that you guys put on the earth, the video that we all saw, I feel like it's all a done deal again. And it has been. And I served, since 1990 on -- I mean, 2000 on Tribal Council. And there was never no true meaningful consultation for our tribes.

The federal government comes in, they have all this planned. And they sit there and they listen, and they say this is a consultation. Whether we agree or disagree, it happens anyway. When it's all -- it's all pre-done. Everything is done already. And then it's given to the people like it's happening right here today.

[...]

So just -- this afternoon or this evening, you know, I, too, come here, and I oppose it. And as a part of the Oglala Sioux Tribe, we opposed it by resolution, and we're going to continue opposing it. And for your record, there was no true meaningful consultation on this issue.

Letter ID: 8267

Commenter Name: Anonymous

Commenter Org: Oglala Sioux Tribe

Comment Text:

EPA DEWEY-BURDOCK Uranium Cumulative Impacts Report Magpie Buffalo, 7 Sacred Rites, Maka San, and Aquifer Teachings

First, the Nuclear Regulatory Commission process for the proposed Dewey-Burdock project thus far has not allowed for tribal members, on and off reservations, to provide meaningful input on the cultural and spiritual significance of the proposed Dewey-Burdock site, which is an ancient winter camp area for Lakota people, and the

potential for the project to desecrate, demolish, and destroy this important and sacred area. The US Court of Appeals for the District of Columbia ruled in 2018 that the NRC staff has failed to comply with the National Environmental Policy Act. The legal challenges raised by Oglala Sioux Tribe in this matter (Docket No. 40-9075-MLA) remain unresolved to date.

The longer history of this region involves its designation by the US government as part of a "national sacrifice area."Honeywell Corporation's attempts in the late 1980s to establish a weapons testing range in Hell's Canyon are part of this legacy, attempts which were thwarted by grassroots organizing by Lakota spiritual leaders/practitioners and the Cowboy and Indian Alliance. Land in this Hell's Canyon area was thereafter returned to the Oglala Sioux Tribe.

The history of this winter camp area, which includes the proposed Dewey-Burdock site, is much older, however. Part of this history is detailed in the attached affidavits, used as testimony in the aforementioned unresolved case between the Oglala Sioux Tribe and the Nuclear Regulatory Commission. The Lakota elder testimony contained within these affidavits represents just a small percentage of the cultural and spiritual knowledge and wisdom held by Lakota people, with great relevance for the proposed Dewey-Burdock project.

Relevant US legislation/Executive Orders to this matter include: Antiquities Act (1906)

National Park Service Organic Act (1916)

Historic Sites Act (1935)

Wilderness Act (1964)

National Historic Preservation Act (1966)

National Environmental Policy Act (1970)

Protection and Enhancement of the Cultural Environment: Executive Order 11593 (1971) Endangered Species Act (1973)

Archaeological Resources Protection Act (1979)

Abandoned Shipwreck Act (1987)

National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional

Cultural Properties (1990)

Native American Graves and Repatriation Act (1990)

Indian Sacred Sites: Executive Order 13007 (1996)

Relevant treaties/case law to this matter include:

Johnson v. McIntosh (1823)

Treaty of July 5, 1825 with the Sioune and Oglala Tribes (1825)

Fort Laramie Treaty (1851)

Fort Laramie Treaty (1868)

Antarctica Treaty (1959) (Demonstrating colonial/imperial theft.)

United States v. Sioux Nation of Indians (1980) (Docket 74, proving the theft/illegal taking of the Black Hills in violation of the 1868 Fort Laramie Treaty)

City of Albuquerque v. Browner (1993) (Isleta Pueblo win against the City of Albuquerque, affirming that Isleta residents have the right to clean river water for the purposes of farming and religious ceremony.)

Washington State Department of Licensing v. Cougar Den, Inc. (2019) (Affirming that the 1855 treaty between the United States and the Yakama Nation forbids the State of Washington to impose a fuel tax on Yakama Nation members.)

Herrera v. Wyoming (2019) (Affirming that the Crow Tribe's hunting rights, as established in the 1868 treaty between the United States and the Crow Tribe, in exchange for lands comprising most of what is currently Montana and Wyoming, did not expire upon the establishment of the State of Wyoming.)

Despite the colonial system's efforts at appropriation, including through Western disciplines such as anthropology, archaeology, and paleontology, sacred site wisdom tied to star knowledge and ongoing spiritual practice intellectually, culturally, and spiritually belongs to the Lakota people. Lakota people have ancient connections to the Black Hills, including the DeweyBurdock winter camp area: sacred sites above and below ground, caves, fault lines, and ancient migration sites. Elders and spiritual practitioners have vast knowledge far beyond the comprehension of the Western education system, and this knowledge cannot be appropriated, diminished, or dismissed.

[ATTACHMENTS: (1) Images from Lakota Star Knowledge: Studies in Lakota Stellar Theology, (2) Table summarizing relevant experience, (3) Testimonies regarding Oglala cultural resources]

Letter ID: 8268

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Individual

Comment Text:

Dear Ms. Valois Robinson:

I am writing to submit comments on the proposed Dewey-Burdock project in southwestern South Dakota, Docket ID: EPA-R08-OW-2019-0512.

First, required engagement with Tribal Nations, in the form of govt-to-govt consultation per Executive Order 13175 and in compliance with Section 106 of the National Historic Preservation Act, has barely begun. **These draft permits should not have been issued before proper and meaningful Tribal consultation takes place**, especially given that the EPA is explicitly seeking comments on "the identification of traditional cultural properties at the Dewey-Burdock Project Site."

[...]

If the EPA is interested in the cultural significance of the Dewey-Burdock area, it must meaningfully consult with Indigenous peoples who have been the caretakers of these lands since time immemorial.

Next, **the EPA's reliance upon the Nuclear Regulatory Commission's cultural resources analysis is wholly inappropriate**, given that the NRC process remains tied up in ongoing and unresolved litigation brought by Oglala Sioux Tribe. In 2015, the Atomic Safety and Licensing Board ruled that the NRC staff had failed to comply with the National Historic Preservation Act in this matter. In 2018, the US Court of Appeals for the District of Columbia upheld that decision, ruling again that the NRC staff had failed to properly identify and consider impacts to cultural resources related to the proposed Dewey-Burdock project. Therefore, when the EPA notes in its draft National

Historic Preservation Act Compliance document that the NRC's review of cultural resources "appears sufficient," they are contradicting both the ASLB and the DC Court of Appeals. The NRC Programmatic Agreement, referenced in the National Historic Preservation Act Compliance document, is not valid, because one of the conditions of the PA, that a cultural resources survey be conducted, has not yet happened.

From my reading, **the EPA's Cumulative Effects document does not reference cultural matters**, which, to serve as functionally equivalent to NEPA compliance, it must.

Letter ID: 00546

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Oglala Sioux Tribe

Comment Text:

Lastly, the cumulative impacts analysis prepared by EPA does not appear to account for (1) the September 2014 two-page announcement from U.S. EPA stating that it has completed a Preliminary Assessment (PA) of the Darrow/Freezeout/Triangle abandoned uranium mines located within the area of the proposed Dewey-Burdock project; and (2) the September 24, 2014 document from Seagull Environmental Technologies captioned as "Preliminary Assessment Report regarding the Darrow/Freezeout/Triangle Uranium Mine Site near Edgemont, South Dakota, EPA ID: SDN000803095." Attached, labeled Ex. OST-026.

Specifically, EPA's analysis must analyze the causation link not just between the unreclaimed surface mines and surface water contamination, but also ground water contamination. These EPA documents raise the issue of a causal link to the contamination of ground water and nearby ground water wells. The lack of analysis of these issues demonstrates a lack of basis for any findings regarding the baseline hydrogeology, and particularly groundwater connectivity issues at the site.

EPA concedes in these documents that additional data and sample collection for soils and surface waters is needed beyond what NRC Staff required or EPA has yet obtained. EPA states further that this data collection is necessary to better characterize and define source areas at the unclaimed uranium mines. Ex. OST-026 at 30. Importantly, these are the "source areas" for the "observed release to groundwater" that "has occurred at the site." Id. Thus, the fact that the proposed new sampling includes only soil and surface waters does not disconnect this issue from the "observed" ground water contamination.

Further, EPA's analysis reveals that "[s]ome significant data gaps exist within the information reported." Exhibit OST-026 at 29. BEPA analysis reveals for the first time that while "[g]roundwater samples were collected within the area of the Site from various wells; however, lack of ground water sampling data from near and upgradient of the Site limited availability of reliable background concentrations." Id. Also, EPA points out that although soil samples were collected at the site by Powertech, "of the 25 samples collected, only three were analyzed for additional radionuclides including uranium, Pb-210, and Th-230 – the other known contaminants on site." Id. Together, these EPA documents demonstrate that additional investigation is necessary at the site in order to establish the scientifically credible baseline analysis required by the SWDA, UIC regulations, NEPA, and the APA.

All considered, the discussion presented herein demonstrates that the applicant, and EPA, have failed to provide an adequate baseline geology and hydrogeology analysis and as a result fails to adequately analyze the impacts associated with the proposed mine, particularly on groundwater resources and with respect to the applicant's ability to contain mining fluid.

[...]

VI. INADEQUATE ANALYSIS OF DISPOSAL OF SOLID 11E2 BYPRODUCT MATERIAL

The EPA and applicant documentation indicate an intent to use the White Mesa Uranium Mill near the White Mesa Ute Community in Utah as the site for disposal of the radioactive wastes (known as 11e2 Byproduct material)

generated by at the proposed Powertech Facility. The EPA analysis fails to acknowledge that the White Mesa Mill is not licensed to receive or dispose of all forms of Powertech's 11e2 Byproduct Material. EPA's draft permits do not, and cannot, authorize Powertech to dispose of 11e2 Byproduct Material at White Mesa. EPA appears to have failed to compare the impacts of transporting and disposing of the solid 11e2 Byproduct Material in Utah against any other alternative disposal site. Further, EPA's cumulative impact report fails to address the cumulative impact or alternatives to Utah licensing the White Mesa Mill as the disposal facility for the ISL wastes.

The EPA documents fail to provide a meaningful review of foreseeable impacts of generating many tons of solid 11e2 Byproduct Materials. Instead, EPA relies on blanket statements that permanent disposal will simply occur in conformance with applicable laws. This uncritical approach does not analyze any of the applicable criteria of regulations applicable to such 11e2 Byproduct Material disposal.

A proper review by EPA must ensure that the impacts and alternatives of creation, storage, and disposal of mill tailings – aka 11e2 Byproduct Material - are fully analyzed and addressed. Permanent disposal of solid 11e2 Byproduct material is a central feature of the proposed mining operation and a competent review must include an analysis of the impacts or alternatives to shipment and disposal at White Mesa. The NRC environmental documents confirm that White Mesa lacks a license approval from Utah to accept and dispose of the wastes created by the draft license or other NRC-licensed ISL facilities in the region. However, neither NRC's nor EPA's analysis includes a review of the impacts such disposition would entail, compares those impacts to other reasonable disposal alternatives, or assess whether disposal at White Mesa facility can be accomplished in accordance with applicable State and federal requirements.

The EPA's cursory discussion of the disposal of Powertech's 11e2 material contains no analysis of whether or not Utah law or the Mill owner's (Energy Fuels) license would allow the interstate transport and disposal of this waste given the history of leaks and violations at the White Mesa facility. Interstate transportation impacts across the Intermountain West are evident, but are dismissed without specific analysis. The EPA presents no information on the type of containers that would be required for the shipments to White Mesa and no corresponding information on the moisture content of the solid 11e2 Byproduct Materials or the anticipated decommissioning wastes.

EPA identifies no other site that is currently licensed to dispose of 11e2 Byproduct Material, implying that no other licensed facility exists in the United States that could accept the Powertech 11e2 Byproduct Material. Whether or not this is the case, White Mesa is not currently licensed to accept Powertech wastes. The failure to address and license the disposal of solid 11e2 Byproduct Material is not a technical deficiency that can be ignored or pushed off until a later time. EPA has a duty to provide specific information, analysis, and alternatives regarding this major feature of an ISL operation in order to allow the Tribe, the Ute Mountain Ute Tribe, the public, and other government decisionmakers to conduct a meaningful analysis of the full scope of environmental impacts involved with Powertech's proposal.

Upon selecting the White Mesa Mill as the proposed destination for the waste from this proposal and the region, as the EPA documentation has done, EPAmust follow through with the necessary analysis. The cumulative impacts report lacks analysis of disposal alternatives, including, but not limited to, access, geology, hydrogeology, quantitative impacts upon water supplies for domestic use, livestock, agriculture, non-domesticated plants and animals, and qualitative on-going and subsequent impacts to water supplies due to releases of chemicals into the surface, groundwater and aquifers flowing through the disposal site. Without such an analysis, EPA, the public, other governmental entities, and the Tribe have no basis to identify and assess alternatives to the license application and find ways to avoid or mitigate possible adverse environmental impacts of the proposed mine.

EPA must provide extra scrutiny to the packaging and transport of these wastes. Other NRC-licensed ISL projects have sent unspecified liquid radioactive wastes in leaking trucks.

The apparent violations involving the Smith Ranch include:

1. the failure to accurately assess the activity of pond sediment and barium sulfate sludge waste shipments;

2. the failure to adequately report the total activity for waste and resin shipments on the associated shipping documents;

3. the failure to accurately label waste shipment packages;

4. the failure to classify and ship the waste packages as Low Specific Activity level two (LSA-II) material;

5. the failure to ship LSA-II waste material in appropriate containers;

6. the failure to ensure by examination or appropriate tests that packages were proper for the contents to be shipped and closure devices were properly secured;

7. the failure to perform evaluations or perform tests that ensured the transportation package would be capable of withstanding the effects of any acceleration and vibration normally incident to transportation;

8. the failure to provide the name of each radionuclide listed and an accurate chemical description of contents; and

9. the failure to provide function specific training to a hazmat employee concerning the requirements that are specifically applicable to the functions the employee performed.

[HYPERLINK "http://www.wise-uranium.org/umopuswy.html" \l "SMITHR"] (NRC Inspection Report Apr. 3, 2017) The WISE-Uranium site reports a series of problems indicating the ISL industry appears to be plagued with irregularities and other problems that question NRC's licensing and regulatory diligence. Id., see also [HYPERLINK "http://www.wise-uranium.org/new.html"] (ISL Spill of the Day). Under these circumstances, EPA must not simply rely on NRC's assumptions and must instead diligently investigate and carry out its own analysis of the radioactive and hazardous waste stream involved with the SDWA permitting.

Letter ID: 00401

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Individual

Comment Text:

Subject: RE: Dewey-Burdock Class III and Class V Injection Well Draft Area Permits

Hi Valois,

A NEPA related question for you: Will EPA's "decision" / Administrative Record provide analysis of various alternatives? That is, consideration of No Action (no permit), and alternative actions (permit with various conditions).

Letter ID: 00527

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Clean Water Alliance

Comment Text:

The applicant's project has also changed in important respects between the time the NRC began considering it and the time the EPA began considering it. Examples include:

- NRC documents consider the use of 4,000 gallons of water per minute for the mining and reclamation process. The EPA applications consider the use of 9,000 gpm, more than twice as much water.
- This project was originally described as involving 1,500 injection, recovery, and monitoring wells. By the time the EPA issued its draft permits, this had grown to 4,000 wells, nearly three times more wells.
- The projected bleed rates have varied over time, from .5% of the water used to 17% of the water used. In addition, the reverse osmosis process makes at least 30% of the water put through the RO process into waste,

and this is not fully considered in the EPA documents. This seriously weakens all the assumptions and calculations on water use in the Class III draft permit and in the Draft Cumulative Effects Analysis.

- Documents prepared by Petrotek for Powertech/Azarga set subsurface water movement rates at 6 to 7 feet per year (without offering peer-reviewed sources). NRC documents set the transmissivity rate in the Fall River formation at 255 ft.^{2} per day and in the Lakota formation at 150 ft.^{2} per day. Dr. Perry Rahn's 2014 article, mentioned above, concluded that the average ground water velocity for the Lakota and Fall River formations in the Dewey-Burdock area was 66.1 ft./year. But, he said, groundwater velocity in the Inyan Kara Aquifers at the Dewey-Burdock site might be as much as 5,480 feet per year – over a mile -- which "might indicate fast groundwater movement through very permeable units or through fractures," although he considered this number "very high." The draft permits omit this critical information that could have very real impacts on wells that are downgradient of the proposed mine site. This issue is critically important, and further independent studies should be done before any permit is issued.
- Powertech talked about the possibility of doing open pit mining at the NRC hearings, and this possibility is not raised in the EPA documents.

These changes in the parameters of the proposed project go to the heart of the information that informs the process in this case. The NRC and the EPA have had different projects submitted to them. The processes are not functional equivalents, and consideration of both projects would not be redundant – it would be sensible. The EPA should begin a thorough NEPA process to assess the project as it is currently proposed.

[...]

This letter provides comments from Clean Water Alliance on the EPA's draft Underground Injection Control permits for the proposed Dewey-Burdock uranium project, as well as the associated proposed aquifer exemption. We oppose the EPA's proposed issuance of permits and an exemption for the following reasons.

There are a number of problems with the EPA's documents and with the process surrounding the draft permits and draft exemption. The items we have identified as key issues are explained below. The first part of the comments will discuss the problems with EPA documents. We will then turn to the EPA process and omissions. Then we'll discuss environmental justice and National Historic Preservation Act issues. And finally, we'll consider other types of issues.

DOCUMENT ISSUES

A glaring problem with the EPA's documents on the proposed project is that large portions of the documents used to support the EPA's draft permits are based on other permits that do not exist or that were prepared inadequately. For example, the EPA's documents defer repeatedly to the NRC's SEIS for the Dewey-Burdock project. This document echoed Powertech/Azarga's submissions in all important respects, rather than the NRC taking a hard look at the situation. The EPA documents also refer repeatedly to the requirements of a state NPDES permit that has not even been applied for. And they refer frequently to a state Large Scale Mine Permit and a state Groundwater Discharge Permit (GDP) that have just barely begun the hearing process, are on hold, and are far from issuance.

To rely on non-existent regulatory instruments and what are essentially the applicant's documents for large portions of the permitting documents indicates both problems with the regulatory process and a lack of analysis of the proposed mine, deep disposal wells, and aquifer exemption. These non-existent "permits" are relied upon for major aspects of the proposed mine and associated facilities. For example, the GDP and NPDES permits are relied upon for statements that the land waste disposal option will be safe and that there will be no contamination. This runs counter to the research on this topic, which indicates a build-up of highly-toxic selenium at a similar site. And then the EPA signs off on Powertech's proposal to grow crops on the land disposal sites without any analysis of the safety of this practice for wildlife, domesticated animals, or humans. This is a problem.

Similarly, the EPA relies upon an "NPDES permit" that hasn't even been applied for to discuss the Emergency Preparedness Program and Environmental Management Plan that are the basis of its discussion of impacts from

spills and leaks, worker safety, and other topics. The agency concludes "Because the project site will be reclaimed and released for unrestricted use," there won't be impacts to land use. It's a long way from a non-existent "permit" to full reclamation twenty years down the line. This use of speculative information should not be allowed as part of the application, cumulative effects, draft permit, or aquifer exemption documents.

Some other examples of the reliance upon non-existent "permits" for key aspects of the Cumulative Effects analysis can be found pages 36, 39, 51, 53, 54, 55 (3 times!), 60, 61, 67, 71, 72 (3 times!), 74, 75 (3 times!), 79, 83, 88, 96, 109, 125, 132, 137, 138, 139, 140, 142, and 143. Until if and when the suggested permits are issued, information based on non-permits should be omitted from the EPA's documents. A realistic, complete EPA analysis should be done.

Letter ID: 00519

Ex. 6 Personal Privacy (PP)

Commenter Org: Black Hills Clean Water Alliance

Comment Text:

There are a number of shortcomings in the EPA's documents and process surrounding these draft permits and draft exemption. This letter will summarize some of the key issues.

The basic issue in this process has been the failure to adhere to the NEPA process. While the NRC has attempted to follow that process for the possession of nuclear materials, its actions have not covered a variety of current issues that are under the EPA's purview, particularly water issues. The applicant's project has also changed in important respects between the time the NRC began considering it and the time the EPA began considering it. Examples include:

• NRC documents consider the use of 4,000 gallons of water per minute for the mining and reclamation process. The EPA applications consider the use of 9,000 gpm, more than twice as much water.

• This project was originally described as involving 1,500 injection, recovery, and monitoring wells. By the time the EPA issued its draft permits, this had grown to 4,000 wells, nearly three times more wells.

• The projected bleed rates have varied over time, from .5% of the water used to 17% of the water used. In addition, the reverse osmosis process makes at least 30% of the water put through the RO process into waste, and this is not considered in the EPA documents. This seriously weakens all the assumptions and calculations on water use in the Class III draft permit documents.

• Documents prepared by Petrotek for Powertech/Azarga set subsurface water movement rates at 6 to 7 feet per year (without offering a source). NRC documents set the transmissivity rate in the Fall River formation at 255 ft.2 per day and in the Lakota formation at 150 ft.2 per day. Dr. Perry Rahn, Professor Emeritus from the South Dakota School of Mines and the acknowledged expert in these matters, said in a 2014 speech (which has since been submitted for publication) that groundwater velocity in the Inyan Kara Aquifers at the Dewey-Burdock site might be as much as 5,480 feet per year – over a mile -- which "might indicate fast groundwater movement through very permeable units of through fractures." The draft permits omit this critical information that could have very real impacts on wells that are downgradient of the proposed mine site.

These changes in the parameters of the proposed project go the heart of the information that informs the process in this case. The NRC and the EPA have had different projects submitted to them. The consideration of both projects would not be redundant – it would be sensible. The EPA should begin a thorough NEPA process to assess the project as it is currently proposed.

Letter ID: 00527

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Clean Water Alliance

Comment Text:

PROCESS ISSUES

The basic process issue in this case has been the failure of the EPA to adhere to the NEPA process. While the NRC has attempted to follow that process for the possession of nuclear materials, its actions have not adequately covered a variety of issues that are under the EPA's purview, particularly water issues. The EPA needs to complete its own NEPA process.

[...]

At the end of the Class V Fact Sheet and the Draft Cumulative Effects Analysis, the EPA indicates that the Endangered Species Act will be complied with, but gives no information on how it intends to do this. When will this be done? What species will be considered? Who will do the analysis (not the company)? This should already have been completed before draft permits were issued.

The EPA mentions the presence of a short-horned lizard, which is rare and protected in South Dakota, in the proposed project area. After stating that the species is "important in some tribal cultures," it offers the solution "Once construction activities begin at the site, the EPA expects that the [sic] any short-horned lizards that were in the area will seek less disturbed locations." This is pure conjecture, without any back-up information on the size or habits of the lizards. Are they territorial, or is it species-appropriate for them to move? Are they large enough to move fast enough to out-run a bulldozer or pick-up truck? Or are they, in reality, unprotected?

Species other than animals are not considered in this discussion. Plants cannot simply move off the site. Some of them are important to tribal practices and customs, such as medicinal plants and timpsila (prairie turnips). Full scientific information should be gathered, and full analysis must be done, for non-animal species. Species that are important to the long-term residents of the area -- the Lakota, Cheyenne, and other native nations – require special protection. There is already information on protection of some species in project documents that could serve as a base for part of this analysis. However, a full and independent analysis is also needed.

This analysis would include close consideration of the opinion of the South Dakota Department of Game, Fish and Parks. This opinion was stated in an October 17, 2008, letter written by Stan Michals. Michals said that exploratory activity should not take place on some parts of the project area between February and August (inclusive) due to the presence of a bald eagle nest (a state-protected bird) and a redtail hawk nest. Mining, deep disposal wells, land application, and reclamation, which are more long-lasting and disruptive than exploration, should clearly also not take place during those seven months of the year in raptor nesting and other protected areas.

The sturgeon chub must be included in the discussion of wildlife concerns. It is present in the Cheyenne River and may be threatened or endangered in areas downstream from the proposed mine. Additional silt, heavy metals, and radioactive materials would be potential threats.

[...]

In addition, the EPA should not rely on the NRC's analysis, recommendations, or regulations. The processes by the two agencies should be independent, so that the proposed mine, disposal wells, and aquifer exemption receive the benefits of the expertise and different regulatory focuses of both agencies.

Letter ID: 00528

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Aligning for Responsible Mining

Comment Text:

B. FAILURE TO ADHERE TO NEPA PROCESS

The basic issue in this process has been the failure to adhere to the NEPA process. While the NRC has attempted to follow that process for the possession of nuclear materials, its actions have not covered a variety of current issues that are under the EPA's purview, particularly water issues. The applicant's project has also changed in important respects between the time the NRC began considering it and the time the EPA began considering it.

Examples include:

• NRC documents consider the use of 4,000 gallons of water per minute for the mining and reclamation process. The EPA applications consider the use of 9,000 gpm, more than twice as much water. **Which is it?**

• This project was originally described as involving 1,500 injection, recovery, and monitoring wells. By the time the EPA issued its draft permits, this had grown to 4,000 wells, nearly three times more wells. **Which is it?**

• The projected bleed rates have varied over time, from .5% of the water used to 17% of the water used. In addition, the reverse osmosis process makes at least 30% of the water put through the RO process into waste, and this is not considered in the EPA documents. **Which is it?** This seriously weakens all the assumptions and calculations on water use in the Class III draft permit documents.

• Documents prepared by Petrotek for Powertech/Azarga set subsurface water movement rates at 6 to 7 feet per year (without offering a source). NRC documents set the transmissivity rate in the Fall River formation at 255 ft.2 per day and in the Lakota formation at 150 ft.2 per day. **Which is it?**

• Dr. Perry Rahn, Professor Emeritus from the South Dakota School of Mines and the acknowledged expert in these matters, said in a 2014 speech (which has since been submitted for publication) that groundwater velocity in the Inyan Kara Aquifers at the Dewey-Burdock site might be as much as 5,480 feet per year – over a mile -- which "might indicate fast groundwater movement through very permeable units of through fractures." The draft permits omit this critical information that could have very real impacts on wells that are downgradient of the proposed mine site.

This further supports the conclusion, stated below, that the Town of Buffalo Gap, SD, should be included in the EJ Analysis, because it relies on wells that are downgradient of the proposed mine site.

These changes in the parameters of the proposed project go the heart of the information that informs the process in this case. The EPA should begin a thorough NEPA process to assess the project as it is currently proposed.

Along the same line, the draft permit is not accurate on the depth of existing drilling on the site. According to the company's Large Scale Mine permit application, drilling has been done on site down to the Sundance aquifer. This means that information on the Minnelusa should already be available. **Where is it?**

[...]

5. Comments on the potential adverse effects of the proposed project

A. **DB Groundwater Discharge Plan May 2017 ("GDP").** In 2012, Powertech applied to the SD DENR for a groundwater discharge permit to dispose of liquid waste fluids via land application. In 2014, the SD DENR recommended conditional approval of the permit application.

Conditions include:

o Land application of liquid wastes cannot occur if sufficient capacity is available via the Class V UIC disposal wells.

o Powertech will collect 4 months of ambient ground water monitoring that is required by ARSD 74:54:02:18 and monthly samples for an additional 8 months AND quarterly sampling thereafter until mining commences. However

per a November 17, 2014 letter to DENR Powertech requested permission to suspend the quarterly sampling. This request was granted per a December 3, 2014 letter from DENR. **This suspension of quarterly sampling is not consistent with the permit condition. Further Powertech lacks the financial resources to comply with sampling or monitoring requirements.**

o The permit conditions proposed by the SD DENR indicates 7 compliance points – 4 at Dewey and 3 at Burdock – the March 2012 GW Discharge Plan(GDP) prepared by Powertech indicates only 2 compliance wells for the Burdock land application areas. **There should be a 3rd alluvial compliance well for the Burdock area land application areas.**

[...]

o C **The permitted allowable limits ("PALs") that are proposed for the compliance wells by DNER in December 2012 are set at "ambient" values for numerous regulated constituents –particularly sulfate, TDS, uranium, gross alpha and radon. These PALs are orders of magnitude above the SD human health standards (SD ARSD 74:54:01::04) and well above the NRC standards included in 10 CFR 20 , Appendix B, Table 2, Column 2.** THE GDP does not provide any discussion to explain alluvial water quality – i.e., – why high TDS, why high sulfate, why high radionuclides. **These discrepancies need to be explained prior to the issuance of a permit.**

o D. No discussion of hydraulic relationship between groundwater in alluvial deposits and surface water in Beaver Creek and Pass Creek. This hydraulic relationship needs to be properly evaluated and publicly disclosed **prior** to the issuance of any permit.

[...]

What about the other toxic constituents?

E. The permit application also indicates that Powertech has applied for a land application discharge permit from DENR. There is no information on the soil types that will receive the effluent, the volumes planned for land application, the chemistry of the water, etc.

Letter ID: 00542

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Prairie Hills Audubon Society

Comment Text:

Here is a link to the National Environmental Policy Act:

[HYPERLINK "https://www.fws.gov/r9esnepa/RelatedLegislativeAuthorities/nepa1969.PDF"]

If the EPA is allowed an equivalent process to NEPA... please discuss how are you meeting NEPA's goals and objectives in an equivalent way, especially please discuss how you meet Sec. 102 [42 USC § 4332 (C) (iii) and (E).:

I quote some of the text below

"Sec. 102 [42 USC § 4332.....

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;.....

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;" (Emphasis added.)

Letter ID: 00543

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Prairie Hills Audubon Society

Comment Text:

Can either of you give me the publication date for the Federal Register Notice of publication of the CFR rule set that CRF 40 CFR 124.9 (b) (6) belongs within. This rule exempts EPA permitting via underground injection control (UIC) from NEPA.

I wish to see the justifications for adoption of this rule set and that would normally be exlained in a preamble for the rule in the Federal Register, when it was adopted.

I ask for this information to help write my comments on Dewey Burdock In-situ Leach Application.

I wish to understand which legal argument EPA uses to exempt itself from NEPA for UIC.

As I understand it courts have exempted agencies from the procedural requirements under NEPA where the court thinks that either:

(1) a direct conflict between NEPA and the organic statute authorizing agency action exists, or

(2) NEPA procedures will be redundant with those provided for under the organic statute due to either displacement or functional equivalence.

I ask that you fully disclose those legal arguments in your final permit documents... fully explain how and why EPA chose to pass CFRs exempting itself from NEPA for UIC. Please fully disclose which legal rationale you tier to. If it is "functional equivalence"; we believe you need to show how you are achieving "functional equivalence" or have redundant procedures to NEPA.

Letter ID: 00544, 545

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Prairie Hills Audubon Society

Comment Text:

Prairie Hills Audubon Society attaches the Clean Water Alliance (CWA) letter. We thank Lilias Jarding for writing this "sign on letter" and we incorporate the CWA comments by reference & we would love to see you do NEPA analysis on this project..

Lilias Jarding repeatedly argues a NEPA argument and asks you to achieve NEPA standards & compliance. We wish to present CWA letter's points skewed in a slightly different way. We are aware that the EPA adopted 40 CFR 124.9 (b) 6, which the EPA uses to avoid NEPA on UIC approvals. We have not found in writing the EPA's justification, in which it explains why it believes can avoid federal law (NEPA) , but we suspect it is tiering to the legal precedent for "functional equivalence" - an winning argument from various court cases. We don't know if 40 CFR 124.9 (b) 6, has ever been put to a court challenge, to see if the EPA's UIC application review process meets a Judge's view of "functional equivalence". We are not sure if the EPA has ever directly approved an In Situ Leach Uranium mine vs allowing States primacy over UIC. Has the EPA done such an mine waste injection UIC approvals, (citing 40 CFR 124.9 (b) 6 to escape NEPA) & actually survived a court challenge?

Since you all believe you can escape NEPA, we suggest you reread/reconsider all Lilias's NEPA arguments, to say you must demonstrate "functional equivalence" with NEPA. If you must supplement the record to address the issues Lilias raises.. you must then release the revised/supplemented set of EPA review documents also for public comment. If you don't do this additional step, there will be another NEPA or NEPA "functional equivalence" argument that maybe can be litigated.

We believe that the project is being approved by multiple entities (EPA, SD-WMB, SD-BME and NRC) and ironically the project description changes. Is the project a slippery moving target? We fear the Applicant will incrementally ratchet up the scope of the project each time some new entity reviews it and expect the new entity to be impressed by and tier to the older reviewing entity's prior approval, who actually reviewed and approved a different and maybe smaller project. We then fear the Applicant will go back to the earlier entity with the later approval of the revised project from the second agency. Maybe this could be an agency manipulation strategy? This also creates special review confusion as the NRC review follows NEPA and the EPA review does not but does "functional equivalence" of NEPA.

Please be extremely clear about how the project morphs constantly. Please present all it's modalities, perhaps as a "range of action alternatives" . Lilias Jarding lays out the conflicting project versions out for you in her Clean Water Alliance letter. You must develop the various alternatives in detail -- with smaller footprint and larger footprint "action alternative" versions. And you must do each alternative's impact analysis. NRC must then do another SEIS.

[ATTACHMENT: "Dewey_Burdock_Project Sign-On Letter 6-17.docx"]

Letter ID: 07449

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Individual

Comment Text:

Subject: Comment on Dewey Burdock In Situ Leach Uranium mining injection wells

[...]

Here is an e-mail from the lady at the EPA in DC I was directed to, when I asked my NEPA questions. See the second sentence in 40 CFR § 124.9 (b) (6).

It is alleged by others that in order for EPA to put this in EPA's administrative CFRs, EPA may be relying on "functional equivalence" doctrine, for which precedent was established in court cases. You might ask Allison about that - see what her opinion is of this and if EPA's CRF 40 CFR 124.9 (b) (6) below, is based in "functional equivalence" legal precedent - how do you comply with that legal precedent parameters?

I suggest once you figure it out, you explain it to the public in your final writings on this permitting and I suggest offer us another extended comment period, once your EPA's alternative to NEPA duties are fully understood.

If I have time, I will write a better letter later.

[...]

Begin forwarded message:

From: "Hoppe, Allison" <hoppe.allison@epa.gov>

Subject: NEPA information

Date: May 11, 2017 at 2:04:02 PM MDT

To: "nhilding@rapidnet.com" <nhilding@rapidnet.com>

Hi Nancy,

Here is the information we talked about. Let me know if you have any further questions.

40 CFR § 124.9 Administrative record for draft permits when EPA is the permitting authority.

• (a) The provisions of a draft permit prepared by EPA under § 124.6 shall be based on the administrative record defined in this section.

• (b) For preparing a draft permit under § 124.6, the record shall consist of:

o (1) The application, if required, and any supporting data furnished by the applicant;

o (2) The draft permit or notice of intent to deny the application or to terminate the permit;

o (3) The statement of basis (§ 124.7) or fact sheet (§ 124.8);

o (4) All documents cited in the statement of basis or fact sheet; and

o (5) Other documents contained in the supporting file for the draft permit.

o (6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared. NPDES permits other than permits to new sources as well as all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.

• (c) Material readily available at the issuing Regional Office or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

• (d) This section applies to all draft permits when public notice was given after the effective date of these regulations.

[HYPERLINK "https://www.epa.gov/uic/aquifer-exemptions-underground-injection-control-program"]

[HYPERLINK "https://www.epa.gov/nepa/epa-compliance-national-environmental-policy-act"]

Best,

Allison Hoppe

Law Clerk

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-1912

Letter ID: 07461 (5/9 Rapid City hearing)

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Prairie-Hills Audubon Society

Comment Text:

I'll begin with 42 U.S.C. 4321 or 40 C.F.R. 1500-1508, the NEPA regulations, and the Council on Environmental Quality rules to execute those.

I'm aware that the EPA has gotten exempted of the Clean Water Act and the Clean Air Act from having to do NEPA analysis. I've not been able to find that you're exempted under the Safe Drinking Water Act or under RCRA. Maybe you are, and I just haven't looked hard enough. But I didn't find it, and I didn't find it in your rules under your NEPA enforcement.

But the GEIS on in-situ leach uranium mining by the NRC just has the cooperating agency, one of the Wyoming agencies, the DEQ or the EQC, I forget which. And the cooperating agency on the SEIS on Dewey-Burdock was the Bureau of Land Management. There was no EPA as the cooperating agency, and you were not a cosignator, that I'm aware of, to any of those frauds.

So ir- -- I don't know whether you should have or not. I'm asking you. Are you exempted under the Safe Drinking Water Act and RCRA? So whether it's you, or you and the NRC, I believe these are failings in those documents.

You're supposed -- they're the -- that -- either the draft or the final had 642 wells as part of the well fields and the 8 for the deep injection. I've heard that the proposal lists 4,000 wells that you guys are writing up recently. That was not one of the action alternatives. That's a much bigger footprint than was in the action alternative in the SEIS.

Letter ID: 00519

Ex. 6 Personal Privacy (PP)

Commenter Org: Black Hills Clean Water Alliance

Comment Text:

Given the fact that Otten and Hall of the U. S. Geological Survey are among those who have observed that "To date, no remediation of an ISR operation in the United States has successfully returned the aquifer to baseline conditions," the presumptions of companies who propose this type of mining – and the brave statements by regulating agencies -- must be approached with abundant caution. If no U.S. ISL mine has ever returned the water to baseline, what makes the EPA believe that this unprecedented task will be accomplished at Dewey-Burdock? This question must be addressed explicitly and analyzed thoroughly as a result of a full NEPA process, if the EPA decides to push forward rather than deny the permits and exemption.

Letter ID: 8196.1

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Oglala Sioux Tribe

Comment Text:

This question must be addressed explicitly and analyzed thoroughly as a result of a full NEPA process if the EPA decides to push forward rather than deny these UIC permits and the aquifer exemption.
[...]
One critical issue not adequately addressed by these permits is that no analysis or discussion of whether it is even possible to treat the quantity of water being used by this project to the required standards. If it is not and if the process is not closely monitored, then water will be permanently contaminated. There is no analysis or discussion of whether it is possible to treat the water quickly enough to keep up with the injection rate proposed by this project.
There is also no analysis or discussion of the reverse osmosis (RO) facilities, their location(s) in the project area, or the impacts they would bring. Included in the Class V Fact Sheet is the assumption that at least 30% of the water put through the RO process typically becomes waste water. However, RO units really use approximately three times as much water as they treat (ref. https://www.epa.gov/sites/production/files/2015-11/documents/2005_11_17_faq_fs_healthseries_filtration.pdf). So an estimate of wastewater generation is more like 300%, or an order of magnitude higher that stated in the draft permit. And this wastewater is a brine that will be radioactive and full of heavy metals requiring further treatment before being disposed of as 11e waste. Even if the RO treatment is feasible, there is also the question of whether RO treatment of all this water can be done economically given the other project costs and the current price of uranium at about $25.00/lb. A responsible agency would include a full discussion of the RO process and its impacts on the environment, waste treatment, bonding requirements, and the feasibility of the project. It would also provide numerous examples of places in which this operation has proceeded successfully at the flow rates and with the contaminants proposed by the Permittee.
In addition, membranes from the RO process typically last only two to five years even with adequate pre-treatment and routine maintenance. (https://www.epa.gov/sites/production/files/2015- 08/documents/ reference guide to treatment technologies for miw.pdf) What happens to these membranes when they are no longer usable and how must they be disposed of?
At the end of the day, we contend that, if the RO process and the actual costs of full aquifer restoration were considered, this project would not be feasible economically, technically, or environmentally. The history of the uranium industry includes abandonment of almost 200 mines and prospects in the southern Black Hills and over 3,000 in the Upper Missouri River basin, plus thousands more in the Southwest. Given this history, the Permittee should be forced to provide an economic analysis using current uranium prices that shows that this project is feasible before they are given any UIC permits or an aquifer exemption. They should also provide a copy of a contract with a buyer for the uranium that would be produced at the mine. Even at a modem ISL mine, the Smith Ranch-Highlands mine in Wyoming, aquifer restoration took place for 10 years, and the water quality was about the same as when mining ended, according to a Violation issued by the Wyoming Department of Environmental Quality. Part of the reason appeared to be that the company was allowed to stop remediation because of costs. This situation should not be allowed to happen again. Strict and regular on-site regulatory enforcement must be an important part of the EPA' s permitting and exemption process.

Letter ID: 00546

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Oglala Sioux Tribe

Comment Text:

III. BASELINE WATER QUALITY INFORMATION IS LACKING

Powertech relies on the same data regarding the baseline water quality for its EPA permit applications as it did for its NRC license applications. The applicant has provided no significant baseline water quality information since the NRC license proceedings were conducted. Indeed, in response to comments from the Tribe during the NRC process specifically detailing the problems with lack of adequate baseline water quality data, NRC Staff confirmed that the applicant collected data from 2007 to 2009 and that "the NRC staff used this information when drafting the affected environmental section of the SEIS as well as analyzing impacts of the proposed action." FSEIS at E-32; Exhibit NRC-009-B-2.

Exacerbating these problems, NRC Staff stated that:

the applicant will be required to conduct additional sampling if a license is granted to establish Commission-approved background groundwater quality before beginning operations in each proposed wellfield in accordance with 10 CFR Part 40, Appendix A, Criterion 5B(5). However, this does not mean that the NRC staff lacks sufficient baseline groundwater quality information to assess the environmental impacts of the proposed action.

FSEIS at E-32; Exhibit NRC-009-B. The same problems persist in the EPA UIC permitting process. The admitted data gaps, and the failure to gain additional sampling before the draft permits were issued, establishes that, like NRC Staff, EPA has not required or used the collection of any additional baseline data for its characterization of baseline water quality, but and that EPA will require additional data in the form of "well field packages" in order to establish a credible baseline for use in the regulatory process. Thus, while the existing administrative record contains data from 2007-2009, the background water quality for use in the actual regulatory process for the facility will be established a future date, outside of any public process, and without the benefit of the public's review and comment.

This approach undermines the UIC permitting process, prevents the EPA from accurately assessing the potential impacts from the project, and prevents the public from being able to effectively review and comment on the project. The result is a lack of compliance with the SDWA and the UIC regulations.

The attached Opening Written Testimony of Dr. Robert E. Moran (Exhibit OST-001) submitted during the NRC hearing process demonstrates the failings of EPA's approach. Exhibit OST-001; Dr. Moran Opening Written Testimony at 16-18. Specifically, Dr. Moran notes the lack of analysis of impacts from past mining activities (p. 16), the lack of necessary information as to the chemical compositions and volumes of wastes, among others (p. 17), the potential bias of the data thus far provided (p. 18) along with the scientifically invalid tactic of requiring the Applicant to collect meaningful water quality data to be used in the configuration of mine design in the future and outside of the public review:

The delayed production of this critical baseline information until after licensing is not scientifically defensible as it prevent establishment of a baseline on which to identify, disclose, and analyze environmental impacts, alternatives, and mitigation measures involved with the Dewey-Burdock proposal. A scientifically defensible monitoring and mitigation of an operating project is not possible based on the baseline data and analyses I have reviewed.

Exhibit OST-001 at 17.

The attached expert Rebuttal Testimony of Dr. Robert Moran also confirms that EPA has not adequately described the baseline conditions at the site using reasonably comprehensive data. Exhibit OST-018. For instance, Dr. Moran specifically opines that despite expectations that post-license collection of data is sufficient to fill in any gaps that currently exist, such a process deprives expert agencies, the public and the parties to this proceeding (and EPA

staff) the opportunity to meaningfully review and evaluate the impacts from the proposed project during the permitting process. Exhibit OST-018, Rebuttal Testimony of Dr. Robert E. Moran at 2 (A.2).

Further, any assertions that this additional data cannot be obtained without full construction of final well-fields is unsupported and contradicted by the expert testimony of Dr. Moran. Dr. Moran opines that adequate baseline data can be gathered "without constructing the ultimate wellfield monitoring network." Id. Dr. Moran points to previous studies undertaken by TVA and Knight Piesold that conducted pump tests to gather baseline data prior to NRC approval. Id. Dr. Moran states that Powertech's consultant Mr. Demuth "confuses hydrological testing that is needed to establish, analyze, and disclose

the hydrogeological setting as part of the NEPA-based NRC permit-approval with the more specialized production tests Powertech will conduct on constructed wellfields." Id. In short, there is no legal, technical, or practical basis to forgo gathering this needed data as part of the UIC application process, or at minimum the EPA draft permit process.

At the hearing conducted in the NRC licensing process, Dr. Moran's testimony confirmed that additional data is necessary for a "complete" baseline analysis, including the collection of data for water quality constituents not presented in the company's application materials, such as strontium and lithium. See attached August 20, 2014 Transcript at p. 1007, line 24 to p. 1008, line 1. Consistent with Dr. Moran's testimony, applicant witness Mr. Demuth admitted that additional data is necessary to provide complete baseline data. Id. at p. 1012, lines 16-20.

Thus, Dr. Moran's expert opening, rebuttal, and live hearing testimony in the NRC administrative process demonstrates that EPA lacks the necessary information to meet its requirements for demonstrating a competent set of baseline data – and instead defers meaningful collection, disclosure, and analysis until a later date, only after the public have been denied the opportunity to comment on the baseline that reveals the affected environment that will be impacted. This critique is centered on EPA's plan to defer collection of baseline and to rely on future analysis of future baseline analyses conducted as part of the well field packages, to be provided only after license issuance. This is in effect an identical system adopted by NRC Staff, which deferred meaningful review of baseline information through a so-called Safety and Environmental Review Panel (SERP) – outside of its NEPA process and long after the public's opportunities for comment and review have run.

Further buttressing this argument is the attached Declaration of Dr. Richard Abitz detailing the requisite standards for scientific validity in a baseline analysis. Exhibit OST-001, at 2. See also, Moran Suppl. Decl. at ¶58 ("The [NRC Staff evaluation], like the Powertech Application, fails to define pre-operational baseline water quality and quantity—both in the ore zones and peripheral zones, both vertically and horizontally."); *accord* ¶¶ 47-74, 75, 82-84, 92-94, 95.

Overall, the Powertech submittal fails to adequately describe the affected aquifers at the site and on adjacent lands and fails to provide the required quantitative description of the chemical and radiological characteristics of these waters necessary to assess the impacts of the operation, including potential changes in water quality caused by the operations.

Letter ID: 8103

Commenter Name: Anonymous

Commenter Org: Individual

Comment Text:

According to the Associated Press, "On July 20, [2018] just 18 days after the Nuclear Regulatory Commission abandoned its effort to conduct a cultural resources survey, the appeals courts three-judge panel issued an opinion. The opinion was filed by Chief Judge Merrick Garland....

Garlands opinion said the Nuclear Regulatory Commission violated the National Environmental Policy Act which is known by the acronym NEPA when the commission decided to leave Powertechs license in effect after acknowledging the lack of an adequate cultural resources survey. The opinion further noted that the commissions decision in the Powertech matter had not been a one-off but appeared to be settled practice.

'The agencys decision in this case and its apparent practice are contrary to NEPA,' Garlands opinion said. 'The statutes requirement that a detailed environmental impact statement be made for a proposed action makes clear that agencies must take the required hard look before taking that action. ('Court, regulators clash over uranium project in South Dakota'

By Seth Tupper. August 13, 2018).

Thus, not only is Powertech proposing to destroy over 2,500 acres of the Black Hills in Lakota territory, and proposing to contaminate the aquifers that underlie that property, but also to ignore the cultural resources that would also be destroyed by the mining activities.

Powertech must not receive approval for this Dewey-Burdock mining project. It must be rejected.

Letter ID: 8196.1

Commenter Name: Ex. 6 Personal Privacy (PP)

Commenter Org: Oglala Sioux Tribe

Comment Text:

A major issue in this case to which we have strong objections has been due to the failure of the EPA to adhere to the National Environmental Policy Act (MAJOR) process. While the NRC has attempted to follow that process for the possession of nuclear materials, its actions have not adequately covered a variety of issues that are under the EPA's purview, particularly water issues. The EPA needs to complete its own NEPA process.

As part of any new or continued process, the EPA should consider more than one alternative action. Although there are places where more than one alternative is considered for a minor action, the major actions only offer one alternative - giving the Permittee a Class III Area UIC permit, a Class V Area UIC permit, and an aquifer exemption.

The EPA must also do a thorough tribal consultation. The existing documents indicate that this process has barely begun, and yet the draft permits have been issued. This makes a mockery of the consultation process, which should be completed well before draft permits are issued, so that the resulting information can be analyzed. The EPA must halt all further action until mutually-satisfactory, government-to-government consultation is completed. All cultural and historical properties must be identified by Lakota experts, who should be paid if they so desire, and given complete protection.